LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 30
JOHN F. DAVIS, CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

DAGMAR READEY, et al.,
Appellants,
vs.
ST. LOUIS COUNTY WATER COMPANY, a Corporation, et al.,
Appellees.

No. 105.

MOTION FOR REHEARING.

J. L. LONDON,
506 Olive Street, Suite 1711-19,
St. Louis 1, Missouri,
MA 1-1462,
Attorney for Dagmar Readey, Hiram Schmedel, Chris J. Muckerman, Henry J. Johnson, Robert Burkham, Mignon E. Dietrich and Jack Welch, Jr., Appellants.

LOUIS L. HICKS,
7814 Forsyth Boulevard,
Clayton 5, Missouri,
PA 7-3766,
Of Counsel.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

DAGMAR READEY, et al.,
Appellants,

vs.

ST. LOUIS COUNTY WATER COMPANY, a Corporation, et al.,
Appellees.

No. 105.

MOTION FOR REHEARING.

Come now the appellants in the above entitled cause and respectfully move the Court to grant appellants a rehearing, and as grounds therefor state:

1. The Court in dismissing the appeal must have overlooked the fact, as shown by the record, that the appellants purchase their water from the St. Louis County Water Company under contracts, and the effect of the ordinance in question and of the ruling of the Missouri Supreme Court in upholding said ordinance without a vote of the people, is to impair the contracts between the residents of the incorporated areas and the water company, thereby

violating Article 1, Section Ten of the Constitution of the United States, providing that no state shall pass a law impairing the obligation of contracts, as well as violating the due process clause of the 14th amendment to the Constitution of the United States, and denying the equal protection of the laws.

2. The right to vote is a substantial federal question.

3. The effect of the Court's decision, without an opinion, dismissing the appeal is to convert the right of appeal under Section 1257, par. 2, 28 U. S. C. A., into the category of certiorari.

4. The effect of the Court's decision is to hold that an ordinance is not within the purview of a statute as previously held in cases heretofore cited in appellants' Statement as to Jurisdiction, namely:

Smith v. California, 361 U. S. 147, 80 S. Ct. 215, 4 L. Ed. 205;

Zucht v. King, 260 U. S. 174, 43 S. Ct. 24, 67 L. Ed. 194;

Jamison v. Texas, 318 U. S. 412, 63 S. Ct. 679, 87 L. Ed. 868.

5. The practical effects of the court's decision are:

(a) To deny the people throughout the United States a hearing on a question of the greatest importance, involving the health and welfare of users of water everywhere throughout the nation;

(b) To cause the people of St. Louis County to be placed in the position of paying for expensive equipment against their will since it will mean an increase in the rates to be charged for the water, necessitated by the cost of the equipment and the cost of fluoride compounds, together with additional labor;

(c) The failure on the part of the Court to render an opinion also disregards the religious issue which was passed upon by the trial court and by the Missouri Supreme Court, and therefore is appropriate for consideration by this Court.

See Statement as to Jurisdiction, pp. 33 and 42, 43 and 44 (Missouri Supreme Court opinion);
Statement as to Jurisdiction, p. 37;
Transcript, p. 744 (Trial Court opinion).

6. We respectfully, but earnestly, insist that in a record where both appellants and appellees agree that a certain percentage of the population would be harmed by the method of fluoridation suggested, especially since there is another method of accomplishing the purpose, for those individuals who favor fluoridation, as shown by the record in the case, that the Court should grant a hearing on the merits and pass upon the legal questions involved, and at least render an opinion.

In this connection we call the Court's attention to the testimony of Dr. D. R. Van Wyngarden, a dental consultant for the **appellees**, who testified (p. 682, transcript) when asked by counsel for appellees **on direct examination** whether any part of the population would be harmed by consuming water fluoridated to one part per million gallons, that between 10 to 12% of children would be harmed. When asked for his definition of harm (Transcript p. 684) he testified: "Anything which may hinder normal development and growth."

Dr. Frederick B. Exner, expert witness for the appellants, testified (Tr. 181) that between 10 and 40% of children under 13 years would be harmed; that some portion of the population would inevitably be harmed (Tr. 178).

Dr. Martin T. Rippe, dentist, testifying for appellants (Tr. 238) testified that there are several methods of **individual** medication by fluorides such as dispensing of pills to the individual and direct application by the dentist; and these do not involve contaminating the entire water supply.

7. Without desiring to be repetitious, we call the attention of the Court to the fact that only a small percentage of the water fluoridated is drunk by the members of a community, the remainder is used for other purposes. This greatly strengthens our argument that fluoridation should be confined only to those who desire it. It is a gross injustice to force it upon those who do not wish fluoridation, especially in view of the fact that the inhabitants of the incorporated areas, who have a right to vote upon it, are deprived of that right by the ordinance which was illegally passed.

CONCLUSION.

Appellants respectfully submit that when all of the parties to the controversy, appellants and appellees, produced testimony that in a county which had over 400,000 (now 700,000) population, 10% of them at least **would be harmed,** then in the interests of justice it appears that it is incumbent upon the Court to grant a hearing on whether these people can have the benefit of the constitutional provisions mentioned above and fully discussed in the Statement as to Jurisdiction, particularly regarding their liberty of choice in the matter.

Appellants respectfully urge upon the Court to grant a hearing, so that the entire country can obtain the benefit of this Court's views on the questions involved, and particularly the legal questions regarding the right of the

people to determine whether they desire the fluoridation of public water supplies.

Respectfully submitted,

J. L. LONDON,
506 Olive Street, Suite 1711-19,
St. Louis 1, Missouri,
MA 1-1462,
Attorney for Dagmar Readey, Hiram Schmedel, Chris J. Muckerman, Henry J. Johnson, Robert Burkham, Mignon E. Dietrich and Jack Welch, Jr., Appellants.

LOUIS L. HICKS,
7814 Forsyth Boulevard,
Clayton 5, Missouri,
PA 7-3766,
Of Counsel.

Certificate of Counsel.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to grounds specified in Rules 33 and 38 of the rules of this court.

.....

J. L. LONDON,
Attorney for Appellants.